



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION
Case #: FOP - 174472

PRELIMINARY RECITALS

On May 18, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on June 15, 2016, by telephone.

The issue for determination is whether the agency erred in issuance of the FS overpayment notice for \$420 based on trafficking.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 21, 2016 a hearing was held by ALJ Balter considering whether petitioner committed an IPV by selling FS benefits for cash to [REDACTED] Distribution between June 2012 and February 2013.
3. On March 24, 2016, ALJ Balter issued a decision in Case # FOF-171191. In that decision, ALJ Balter found that petitioner committed an Intentional Program Violation by trafficking \$420 of FoodShare benefits to [REDACTED] Distribution. The ALJ sustained the IPV and the sanction of suspension from the FS program.
4. Petitioner did not appeal that decision.
5. On March 25, 2016, the agency issued an overpayment notice for \$420 based on the finding of trafficking.
6. Petitioner appealed from the overpayment notice.

DISCUSSION

The question for determination is whether petitioner is liable for the \$420 of trafficked FS. The question is NOT whether petitioner trafficked the \$420 in FS. That determination was made by ALJ Balter and it was not appealed. I will not revisit the merits of whether the trafficking or the IPV occurred.

The agency is authorized to recoup an FS overpayment based on trafficking. If an FS overpayment occurred, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) *Benefits that are overpaid* or
- (ii) **Benefits that are trafficked.** ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not*

related to trafficking. (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment

...

(e) Initiating collection actions and managing claims.

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e).

Petitioner did not argue that the calculation or issuance of the claim is incorrect. Petitioner only wished to argue the merits of the trafficking allegation. That issue was decided by ALJ Balter and petitioner did not appeal that decision. I note that ALJ Balter's decision was sent to the same address that petitioner is using for this instant matter. If petitioner wished to have another opportunity for hearing after his non-appearance, he would have had to request a rehearing within 30 days of the March 24, 2016 decision issuance date.

CONCLUSIONS OF LAW

The agency correctly issued the overpayment claim and notice after ALJ Balter found that petitioner had trafficked FS and sustained the IPV for trafficking.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

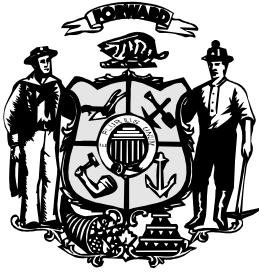
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of July, 2016

\s _____
John Tedesco
Administrative Law Judge
Division of Hearings and Appeals

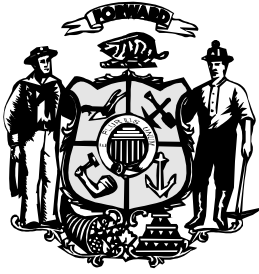
**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 14, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 27, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability